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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/038,062	
	Filing Date	January 4, 2002	
	First Named Inventor	Stephen A. Milks	
	Art Unit	3746	
	Examiner Name	Charles G. Freay	
Total Number of Pages in This Submission		Attorney Docket Number	8416-000008

**ENCLOSURES (check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form  <input checked="" type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment / Reply  <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> Petition to Convert to a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Technology Center (TC)  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):  <b>Pre-Appeal Brief Request for Review; Attachment to Pre-Appeal Brief Request for Review (4 pgs); and postcard.</b>
<b>Remarks</b>		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name	W.R. Duke Taylor	Reg. No.	31,306
Signature					
Date	September 1, 2005				

**CERTIFICATE OF TRANSMISSION/MAILING**

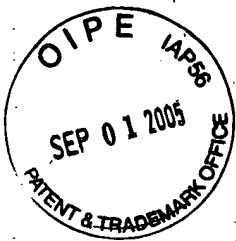
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Signature		Date	September 1, 2005

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 8416-000008	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>September 1, 2005</u></p> <p>Signature <u>W.R. Duke Taylor</u></p> <p>Typed or printed name <u>W.R. Duke Taylor</u></p>		Application Number  10/038,062	Filed  1/4/02
		First Named Inventor  Stephen A. Milks	
		Art Unit  3746	Examiner  Charles G. Freay
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>Attachment (3 pages)</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record.      31,306 Registration number</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JFW

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 10/038,062  
Filing Date: January 4, 2002  
Applicant: Stephen A. Milks  
Group Art Unit: 3746  
Examiner: Charles G. Freay  
Title: Air Circulation Device  
Attorney Docket: 8416-000008

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Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The Examiner has rejected Claims 1, 5, 7, 8, 10, 13-16 and 19 under 35 U.S.C. §103(a) as being unpatentable over Raab et al. (U.S. Patent No. 5,232,090) in view of Fujisaki et al. (U.S. Patent No 4,684,839); Claims 2 and 11 in view of the above and further in view of Hung (U.S. Patent No. 5,839,205); Claims 10 and 19 as being unpatentable over Raab et al.; and Claim 11 as being unpatentable over Raab et al. in view of Hung.

The Examiner's Office Action dated June 2, 2005 alleges that Raab et al. teaches a motor which has a casing which must be rigid and that Fujisaki et al. discloses a flat case as well as the fact that Fujisaki et al. discloses a seal.

Turning to the Raab et al. reference, while disclosing that it does have a motor, the invention is directed to biasing support legs on a fan housing. The legs enable the fan to be packaged in a box and, upon removal of the fan from the box, the leg automatically springs to an opened position. Raab et al. makes mention of a motor only once at column 2, line 21.

The Examiner then combines Raab et al. with the Fujisaki et al. reference. The Examiner alleges that Fujisaki et al. discloses a flat sealed motor. The Examiner alleges that Fujisaki et al. illustrates a labyrinth seal sealing the shaft. The Fujisaki et al. reference, at column 9, lines 6-15, makes only one reference to the bearing 53 through which the shaft 11 is passed. Nowhere does it speak of a labyrinth seal or a seal of any type. The Examiner is clearly fabricating this teaching of Fujisaki et al. So much so, that the Examiner states that a labyrinth seal exists. A labyrinth seal is one which has an intricate undulating or serpentine passage which crosses back and forth upon itself. No such seal is illustrated or defined in the Fujisaki et al. reference. Accordingly, Applicant believes that a clear error has been committed by the Examiner and that the combination of references fails to disclose or suggest the invention. The rejection fails to provide a prima facie case of obviousness.

The combinations of the Hung reference with the above two references fails to overcome the deficiencies of the Raab et al. and Fujisaki references. Accordingly, Applicant believes Claims 2 and 5-9, which depend from Claim 1, to be patentably distinct over the art cited by the Examiner.

Independent Claim 10 relates to an air circulation device with at least one elongated support secured to the body face by a fastening member. The elongated

support portion is pivotally disposed about the fastening member and manually positioned in an extended position, a contracted position or any desired intermediate position between the extended and contracted positions to support the air circulating device and a number of different elongated support member positions.

The Raab et al. reference cited by the Examiner illustrates support members 19 and 20 which are automatically pivotally moved by a spring 24 from one position to its second position when the fan is pulled out of the shipping container. Nowhere does Raab et al. disclose, suggest or speak to the manual positioning of the members as claimed. Accordingly, the Examiner has created clear error since the Raab et al. members only disclose automatic movement from a stored position to a position removed from the shipping container. There is no intermediate positions as claimed by Applicant.

The Hung reference fails to overcome the deficiencies of Raab et al. Thus, Claims 11, 13-16, 18 and 19 are patentably distinct over the art cited by the Examiner.

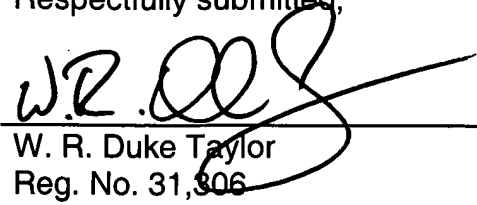
Accordingly, in view of the Examiner's clear errors, Applicant would respectfully request the present application to be passed to issue and a Notice of Allowance issued in this application.

Should there be any questions or comments, please do not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: September 1, 2005

By:

  
W. R. Duke Taylor  
Reg. No. 31,306

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

WRDT/lkj